IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 64 OF 1991.

Sukhwantsingh Hazarsingh ... Applicant.

V/s.

Commissioner of Income-tax,
Bombay City- XIII, Bombay. ... Respondent.

Shri P.J. Pardiwala i/b Kanga and Kanga for the applicant.

Shri A.N.Kotangale, Senior Counsel for the respondent.

CORAM : V.C.DAGA AND A.S.AGUIAR, JJ.

DATED : 13.7.2005

P.C. :

. The Tribunal has made reference to this Court for opinion under section 256(1) of the Income-tax Act, 1961, as in view of the Tribunal, the question of law arises from the order relating to Assessment Year 1980-81. The question of law reads as under:

" Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in coming to the conclusion that the factum of gift of Rs. 6,50,000/- was not proved by satisfactory and convincing evidence?"

Factual Matrix:

2. The factual matrix reveals that the assessee claimed before the I.T.O. that he had received a gift of Rs. 6,50,000 from his cousin Mr. Amarjitsingh Anand who was at the relevant time resident of Dubai. This gift was alleged to have been received on 26th November 1979. The assessee filed the return of income for the year under consideration on 29th December 1980, declaring total income of Rs. 85,781. The assessment was completed by the I.T.O. under the provisions of sec. 143(3) and the assessed income was Rs. 1,02,780.

3. The Income-tax Commissioner subsequently, on perusal of the order, came to the conclusion that the order passed by the I.T.O. was erroneous and prejudicial to the interest of the Revenue. He, after issuing a notice to the assessee, passed an order u/s 263 setting aside the assessment order holding that the order passed by the I.T.O. was without proper verification of the source of the amount of Rs. 6,50,000/- alleged to have been received by way of gift. The Commissioner directed the ITO to frame the assessment de novo.

. The ITO completed the assessment thereafter by treating the said amount of Rs. 6,50,000/- as the assessee's income from undisclosed sources.

. When the matter was carried in appeal, the C.I.T.(Appeals) upheld the order of the ITO.

. In further appeal before the Tribunal by the assessee, the order passed by the CIT(A) was confirmed. The tribunal observed that the gift was not proved by satisfactory and convincing evidence.

4. The assessee, thereafter, moved a Miscellaneous petition pointing out certain mistakes alleged to have been committed by the Tribunal in the order passed by it. The Misc.petition was disposed of by the Tribunal on 8th May 1990. The Tribunal took the view that there was no mistake apparent on the face of record. It opined that what was sought to by moving the misc.petition was nothing but the review of the order of the Tribunal as such it observed that it has no such power. From these facts question of law extracted in the opening part of the order has been raised and referred to this Court for opinion.

Consideration:

5. Having heard rival parties, the Tribunal on merits has come to the conclusion that the gift in question was not genuine. What is decided is a pure question of fact based on appreciation of evidence. The Tribunal examined the evidence available on record and after appreciation thereof, reached to

the conclusion that the gift was not genuine. In this backdrop, the question referred to can hardly be said to be a question of law. Appreciation of evidence cannot be a question of law. If two views are possible and one reasonable view based on evidence is taken, then such a view can hardly be said to be a perverse view. No fault can be found with the Tribunal's order if finding of fact recorded is based on some evidence to support it even though another or higher Court might have come to a different conclusion upon that evidence. Reference, in our view, was unwarranted. It would have been better for the assessee to avail any other remedy other than the one under section 256(1). Since no question of law is involved, we return the reference unanswered with no order as to costs.

(A.S. AGUIAR,J.) **(V.C.DAGA,J)**